



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 1957-00
11 August 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 5 May 1999 for four years. On 10 May 1999 a Navy drug laboratory reported that a urine specimen you submitted on 6 May 1999 had tested positive for marijuana. Thereafter, you were notified that administrative separation processing was being initiated by reason of defective enlistment as evidenced by a positive accession urinalysis for marijuana. You were advised of your procedural rights, declined to consult with counsel, and waived the right to have your case reviewed by the general court-martial convening authority.

On 14 May 1999 the discharge authority directed an uncharacterized entry level separation by reason of erroneous enlistment due to drug abuse, and assignment of an RE-4 reenlistment code. You were so discharged on 19 May 1999.

Regulations require the assignment of an RE-4 reenlistment code to individuals discharged by reason of erroneous enlistment due to drug abuse. The Board noted the letters of reference in support of your application and your statement contending that

before you went to recruit training you were given a going-away party and some other guests were smoking marijuana. You claim that you did not smoke marijuana at the party, but tested positive because you were in the room with those who were smoking. However, the Board noted that it is impossible to test positive based on passive inhalation given the threshold levels established for detection by Navy laboratories. Since you were treated no differently than others discharged under similar circumstances, the Board could find no error or injustice in your assigned reenlistment code. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director